



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Cary Davidson, Esq.
Reed & Davidson, LLP
515 South Figueroa Street, Suite 1110
Los Angeles, CA 90071-3301

NOV 18 2016

RE: MUR 6901

Dear Mr. Davidson:

On November 7, 2014, the Federal Election Commission ("Commission") notified your clients, Buck for Colorado and Cheryl Klein in her official capacity as treasurer (collectively, the "Committee") of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On November 14, 2016, based on the information contained in the complaint, and information provided by the Committee, the Commission decided to exercise its prosecutorial discretion and close its file in this matter. Accordingly, the Commission closed its file in this matter on November 14, 2016.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). A copy of the dispositive General Counsel's Report is enclosed for your information.

If you have any questions, please contact Ruth Heilizer, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Lisa J. Stevenson
Acting General Counsel

A handwritten signature in black ink, appearing to be "Lisa J. Stevenson", is written over the typed name and title.

BY: Jeff S. Jordan
Assistant General Counsel
Complaints Examination
& Legal Administration

Enclosure:
General Counsel's Report

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BEFORE THE FEDERAL ELECTION COMMISSION

ENFORCEMENT PRIORITY SYSTEM 2016 JUN 28 AM 10: 25
DISMISSAL REPORT

SENSITIVE

MUR: 6901

Complaint Receipt Date: November 3, 2014

Response Dates: November 20, 2014 (Times-Call);
December 31, 2014 (Committee)

EPS Rating

Respondents: Buck for Colorado and
Cheryl Klein, Treasurer
(the "Committee");
Kenneth R. Buck;
Denver Post;
Longmont Daily Times-Call
(aka "Times-Call")

Alleged Statutory/
Regulatory Violations

52 U.S.C. § 30101(9)(B)(i)
11 C.F.R. §§ 100.73, 100.132
52 U.S.C. § 30120(a)(1)
11 C.F.R. § 110.11(a)-(b)

The Complainant alleges that the 2014 congressional campaign of Kenneth Buck and his Committee aired a radio advertisement on October 15, 2014, entitled "A Great America" that incorrectly identified the proper name of the Committee that had paid for it. Additionally, the Complainant claims that two newspapers, the Denver Post and the Times-Call, published news articles and advertisements by and in support of Buck's campaign, as well as editorials endorsing Buck, but refused to cover and interview Buck's opponents.¹ The Times-Call responds that its coverage of the Buck-Meyers campaign fell within the Commission's "press exemption" to the Act's definitions of "contribution" and "expenditure." As for the Committee, it acknowledges that it ran a radio advertisement that misidentified the advertisement's payor as "Buck for Congress" instead of the correct name, "Buck for Colorado." Within 24 hours of receiving the complaint, the Committee states that it corrected the advertisement's disclaimer.

¹ In 2014, Congressman Buck, a candidate in Colorado's Fourth Congressional District, defeated Complainant Vic Meyers in the general election.

1 The Federal Election Campaign Act of 1971, as amended ("Act") and Commission
2 regulations appear to exempt the news reports and commentary in this matter from the definition of
3 "contribution" and "expenditure." 52 U.S.C. § 30101(9)(B)(i) ("the term 'expenditure' does not
4 include . . . any news story, commentary, or editorial distributed through the facilities of any
5 broadcasting station, newspaper, [or] magazine . . . unless such facilities are owned or controlled by
6 any political party, political committee, or candidate); *see also* 11 C.F.R. §§ 100.73, 100.132
7 (neither a contribution nor an expenditure results from such news stories, commentaries, or
8 editorials).² As for the Committee, it admittedly included a disclaimer in its radio advertisements
9 that incorrectly stated its name, as required by the Act and Commission regulations. *See* 52 U.S.C.
10 30120(a)(1); *see also* 11 C.F.R. § 110.11(a)-(b). However, the Committee asserts that it promptly
11 corrected the "inadvertent" and "minor" error within a day of being notified of it.³

12 Based on its experience and expertise, the Commission has established an Enforcement
13 Priority System using formal, pre-determined scoring criteria to allocate agency resources and
14 assess whether particular matters warrant further administrative enforcement proceedings. These
15 criteria include: (1) the gravity of the alleged violation, taking into account both the type of activity
16 and the amount in violation; (2) the apparent impact the alleged violation may have had on the
17 electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in
18 potential violations and other developments in the law. This matter is rated as low priority for
19 Commission action after application of these pre-established criteria. Given that low rating and the

² Complainant's argument that the news coverage may have been more favorable to Buck than him does not affect this analysis. *See* Factual and Legal Analysis at 3, MUR 6579 (ABC News, Inc) (Recognizing that an entity otherwise eligible for the media exemption would not lose its eligibility merely because of a lack of objectivity in a news story, commentary, or editorial, even if the news story, commentary, or editorial expressly advocates the election or defeat of a clearly identified candidate for Federal office).

³ It is not clear from the public record how much the advertisements might have cost.

other circumstances presented, we recommend that the Commission dismiss the allegations consistent with the Commission's prosecutorial discretion to determine the proper ordering of its priorities and use of agency resources. *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985). We also recommend that the Commission close the file as to all respondents and send the appropriate letters.

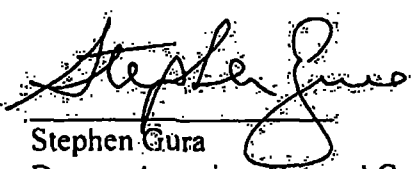
Daniel A. Petalas
Acting General Counsel

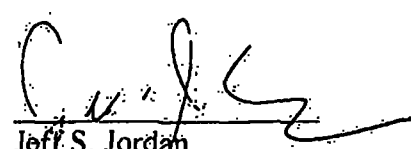
Kathleen M. Guith
Acting Associate General Counsel
for Enforcement


6.28.16

Date

BY:


Stephen Gura
Deputy Associate General Counsel
Enforcement


Jeff S. Jordan
Assistant General Counsel
Complaints Examination
& Legal Administration


Ruth Heilize
Attorney
Complaints Examination
& Legal Administration